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RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

William C. Wilka (CA Bar No. 79667)
Dudnick, Detwiler, Rivin & Stikker, LLP
351 California Street, 15th Floor
San Francisco, California 94104
(415) 982-1400

Louis W. Diess, III
ldiess@mccarronlaw.com
McCarron & Diess
4900 Massachusetts Avenue, N.W., Suite 310
Washington, D.C. 20016
(202) 364-0400

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CW

LEE-RAY TARANTINO CO., INC., d/b/a
GOLDEN STATE PRODUCE CO.

Plaintiff

v.

THEODORAS KOLIATISIS, d/b/a/
4TH & GEARY FARMERS MARKET

Defendant

Civil Action No:

ATTORNEY CERTIFICATION
WHY NOTICE SHOULD NOT
BE REQUIRED PURSUANT
TO RULE 65(B)

The undersigned represents plaintiff in this action to enforce the trust provisions
of the Perishable Agricultural Commodities Act (PACA), 7 U.S.C. §499e(c).

Notice of this motion should not be required because notice will afford defendant
an opportunity to dissipate trust assets that are required by statute to be held for the
benefit of plaintiff, a PACA trust creditor of defendants in the amount of \$328,344.36.

Defendants are under a statutory duty to pay promptly for produce from the trust
established by statute. Defendants have not disputed the debt in any way and have

1 failed to pay despite repeated demands. Between September 29, 2007 and October
2 13, 2007, defendants tendered four (4) checks to plaintiff in the aggregate amount of
3 \$76,000.00 in partial payment for the produce which was supplied by the plaintiff.
4 However, all four (4) checks were returned by the bank due to insufficient funds. These
5 facts demonstrate that defendants are failing to maintain sufficient assets in the
6 statutory trust and have dissipated and will continue to dissipate the PACA trust in favor
7 of plaintiff.
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10 Advising defendants of the pendency of this motion will allow defendants to
11 continue to pay non-trust debts with trust assets prior to the hearing in order to avoid
12 serious personal liabilities, such as criminal liability for failure to pay withholding taxes.
13 As noted in the House Report on the PACA trust amendment, once trust assets are
14 dissipated, it is all but impossible to recover them. H.R. Rep. No. 543, 98th Cong., 2d
15 Sess. 4 (1983), reprinted in 1984 U.S. Code & Admin. News 405, 411. See also
16 Tanimura & Antle, Inc. v. Packed Fresh Produce, Inc., 222 F.3d 132 (3rd Cir. 2000); J.R.
17 Brooks & Son, Inc. v. Norman's Country Market, Inc., 98 B.R. 47 (Bkrtcy. N.D. Fla.
18 1989); DiMare Fresh Fruit v. Thomas J. Gatziolis & Co., 774 F.Supp. 449 (N.D. Ill.
19 1991); and Gullo Produce Co., Inc. v. Jordan Produce Co., Inc., 751 F.Supp. 64 (W.D.
20 Pa. 1990).
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23 Entry of a temporary restraining order without notice guarantees the performance
24 of the statutory duty to preserve and pay trust assets, and prevents any further
25 dissipation pending a further hearing, which can be set forthwith.
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2 Dated this 9th day of November, 2007

3 DUDNICK, DETWILER, RIVIN & STIKKER, LLP

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5
6 By: William C. Wilka
7 William C. Wilka (CA Bar No. 79667)
8 351 California Street, 15th Floor
9 San Francisco, California 94104
10 (415) 982-1400

11 McCARRON & DIESS
12 Louis W. Diess, III
13 4900 Massachusetts Ave., N.W.
14 Washington, DC 20016
15 (202) 364-0400
16 Attorneys for Plaintiff
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